

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

David Wright, Sr.,)	Case No. 8:17-cv-02805-DCC-JDA
)	
Plaintiff,)	
)	
v.)	ORDER
)	
P.A. Hansen, Dr. Berrios, Dr. J. Onuoha,)	
Luis Negron, Dr. Cherrie Smith,)	
Dr. DeCoco,)	
)	
Defendants.)	
_____)	

This matter is before the Court on Defendant Cherrie Smith’s Motion to Dismiss and Defendants P.A. Hansen, Dr. Berrios, and J. Onuoha’s Motion to Dismiss or, in the alternative, Motion for Summary Judgment. ECF Nos. 115, 117. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Jacquelyn D. Austin for pre-trial proceedings and a Report and Recommendation (“Report”). On May 28, 2020, the Magistrate Judge issued a Report recommending that both Motions be granted.¹ ECF No. 152. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has not filed substantive objections to the Report and the time to do so has lapsed.

¹ The Magistrate Judge construes Defendants Hansen, Berrios, and Onuoha’s Motion as a Motion for Summary Judgment. ECF No. 152 at 12–13. The undersigned will do likewise.

APPLICABLE LAW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

DISCUSSION

As previously stated, the Report was issued on May 28, 2020. On June 8, 2020, Plaintiff filed a Motion to Appoint Counsel, Motion to Continue, or Motion to Withdraw. ECF No. 155. Within that Motion, Plaintiff requested appointment of counsel or a continuance of his case as a result of the restrictions placed upon him due to the current pandemic. In the alternative, he requested to withdraw his case and refile it at a later date. The Magistrate Judge directed that Plaintiff and counsel for Defendants appear for a telephone hearing to discuss the Motion. ECF No. 156.

On June 15, 2020, the Magistrate Judge issued a text order acknowledging Plaintiff's Motion but stating that "if Plaintiff withdraws the case, the statute of limitations likely would prevent him from refiling the case unless Defendants agree to toll and/or waive the statute of limitations defense." ECF No. 160. That same day, Plaintiff filed a document that has been docketed as "objections." ECF No. 161. On June 17, 2020, the Magistrate Judge held the telephone hearing. ECF No. 163. At the conclusion, the Magistrate Judge issued a minute entry in which she noted that Defendants' counsel "informed the Court that a procedure has been put in place at FCI Petersburg where inmates may request time in the law library, however exactly how much time is not clear." The Magistrate Judge directed Defendants' counsel to "file a status report with the Court to provide (a) information regarding Defendants representation if the case were to be refiled and (b) additional detail about the process for requesting time in the law library and the amount of time Plaintiff would be afforded for research."

Defendants' counsel filed the status report on June 22, 2020. ECF No. 165. Within the report, counsel provided additional details regarding the availability of the law library to inmates at FCI Petersburg. On June 23, 2020, the undersigned issued an order granting in part Plaintiff's Motion and directing him to file objections to the Report by July 23, 2020. ECF No. 166. The undersigned recommitted the remainder of the Motion to the Magistrate Judge, who issued an order granting in part and denying in part Plaintiff's various requests. ECF No. 169. Since the telephone hearing, Plaintiff has filed a Motion to Appoint Counsel on June 29, 2020, which was denied by the Magistrate Judge, and a Notice of Change of Address on August 26, 2020. ECF Nos. 172, 173, 177.

Upon thorough review of all of Plaintiff's filings since the entry of the Report, the Court does not believe that any of the documents could be construed as specific objections to the Report. In the document filed as "objections," Plaintiff generally states that he "disagrees with the recommendation." ECF No. 161. The remainder of the document is devoted to explaining why Plaintiff requires additional time to respond to the Report. Accordingly, the Court has not construed this document as putting forth specific objections.

Nevertheless, out of an abundance of caution for a pro se Plaintiff, the Court has conducted a de novo review of the record, the applicable law, and the Report of the Magistrate Judge. Upon such review, the Court agrees with the recommendation of the Magistrate Judge that Defendants Smith, Hansen, Berrios, and Onuoha's Motions should be granted.

CONCLUSION

Accordingly, the Court adopts the Report of the Magistrate Judge. Defendant Smith's Motion to Dismiss [115] is **GRANTED** and Defendants' Hansen, Berrios, and Onuoha's Motion to Dismiss or, in the alternative, Motion for Summary Judgment [117] is **GRANTED**.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

September 23, 2020
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.